

FILED

NOV 04 2006

**Board of Vocational Nursing
and Psychiatric Technicians**

EDMUND G. BROWN JR., Attorney General
of the State of California
GREGORY J. SALUTE
Supervising Deputy Attorney General
TERRENCE M. MASON, State Bar No. 158935
Deputy Attorney General
California Department of Justice
300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 897-6294
Facsimile: (213) 897-2804

Attorneys for Complainant

**BEFORE THE
BUREAU OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. VN-2005-659

MICHAEL JOSEPH GARCIA
18169 Danbury Avenue
Hesperia, CA 92345

ACCUSATION

Vocational Nurse License No. VN 179709

Respondent.

Complainant alleges:

PARTIES

1. Teresa Bello-Jones, J.D., M.S.N., R.N. ("Complainant") brings this Accusation solely in her official capacity as the Executive Officer of the Bureau of Vocational Nursing and Psychiatric Technicians ("Bureau"), Department of Consumer Affairs.
2. On or about February 6, 1997, the Bureau (formerly known as the Board of Vocational Nursing and Psychiatric Technicians) issued Vocational Nurse License No. VN 179709 to Michael Joseph Garcia ("Respondent"). The Vocational Nurse License was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2008, unless renewed.

JURISDICTION

3. This Accusation is brought before the Bureau, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise

1 indicated.

2 4. Code section 101.1, subdivision (b), states:

3 "(1) In the event that any board, as defined in Section 477, becomes inoperative or
4 is repealed in accordance with the act that added this section, or by subsequent acts, the
5 Department of Consumer Affairs shall succeed to and is vested with all the duties, powers,
6 purposes, responsibilities and jurisdiction not otherwise repealed or made inoperative of that
7 board and its executive officer.

8 (2) Any provision of existing law that provides for the appointment of board
9 members and specifies the qualifications and tenure of board members shall not be implemented
10 and shall have no force or effect while that board is inoperative or repealed. Every reference to
11 the inoperative or repealed board, as defined in Section 477, shall be deemed to be a reference to
12 the department."

13 5. Code section 150 states: "The department is under the control of a civil
14 executive officer who is known as the Director of Consumer Affairs."

15 6. Code section 477 states:

16 "As used in this division:

17 (a) "Board" includes "bureau," "commission," "committee," "department,"
18 "division," "examining committee," "program," and "agency."

19 (b) "License" includes certificate, registration or other means to engage in a
20 business or profession regulated by this code."

21 STATUTORY PROVISIONS

22 7. Section 2875 of the Business and Professions Code ("Code") provides, in
23 pertinent part, that the Bureau may discipline the holder of a vocational nurse license for any
24 reason provided in Article 3 (commencing with section 2875) of the Vocational Nursing Practice
25 Act.

26 8. Section 118(b) of the Code provides, in pertinent part, that the expiration
27 of a license shall not deprive the Bureau of jurisdiction to proceed with a disciplinary action
28 during the period within which the license may be renewed, restored, reissued or reinstated.

1 Under section 2892.1 of the Code, the Bureau may renew an expired license at any time within
2 four years after the expiration.

3 9. Section 2878 of the Code states:

4 "The Board may suspend or revoke a license issued under this chapter [the
5 Vocational Nursing Practice Act (Bus. & Prof. Code, § 2840, et seq.)] for any of the following:

6 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

7

8 "(4) The use of excessive force upon or the mistreatment or abuse of any patient.

9 For the purposes of this paragraph, "excessive force" means force clearly in excess of that which
10 would normally be applied in similar clinical circumstances.

11

12 "(d) Violating or attempting to violate, directly or indirectly, or assisting in or
13 abetting the violating of, or conspiring to violate any provision or term of this chapter.

14

15 "(f) Conviction of a crime substantially related to the qualifications, functions,
16 and duties of a licensed vocational nurse, in which event the record of the conviction shall be
17 conclusive evidence of the conviction.

18

19 "(j) The commission of any act involving dishonesty, when that action is related
20 to the duties and functions of the licensee."

21 10. Section 490 of the Code provides, in pertinent part, that the Bureau may
22 suspend or revoke a license when it finds that the licensee has been convicted of a crime
23 substantially related to the qualifications, functions or duties of a licensed vocational nurse.

24 11. California Code of Regulations, title 16, section 2521, states:

25 "For the purposes of denial, suspension, or revocation of a license pursuant to
26 Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or
27 act shall be considered to be substantially related to the qualifications, functions or duties of a
28 licensed vocational nurse if to a substantial degree it evidences present or potential unfitness of a

1 licensed vocational nurse to perform the functions authorized by his license in a manner
2 consistent with the public health, safety, or welfare.”

3 12. Section 125.3 of the Code provides, in pertinent part, that the Bureau may
4 request the administrative law judge to direct a licensee found to have committed a violation or
5 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
6 and enforcement of the case.

7 **FIRST CAUSE FOR DISCIPLINE**

8 **(Conviction of a Substantially Related Crime)**

9 13. Respondent is subject to disciplinary action under section 2878,
10 subdivision (f) and 490 of the Code, as defined in California Code of Regulations, title 16,
11 section 2521, in that Respondent has been convicted of a crime substantially related to the
12 qualifications, functions or duties of a licensed vocational nurse, as follows:

13 a. On or about September 27, 2006, Respondent was convicted by the Court
14 on a plea of nolo contendere for violating one count of Penal Code section 415, subdivision (2),
15 an infraction (disturbing the peace), in the Superior Court of California, County of San
16 Bernardino, Victorville Jurisdictional District, Case No. MV1048159 entitled *The People of the*
17 *State of California v. Michael Joseph Garcia*.

18 b. The circumstances surrounding the conviction are that on or about
19 January 15, 2006, Respondent was found to have maliciously and willfully disturbed another, to
20 wit: by punching a minor child about the mouth and face causing her nose to bleed, pulling out
21 her hair, and pulling a decorative chain from her neck.

22 **SECOND CAUSE FOR DISCIPLINE**

23 **(Use of Excessive Force/ Mistreatment of a Patient)**

24 14. Respondent is subject to disciplinary action under section 2878,
25 subdivisions (a)(4) and (d), in that on or about June 4, 2006, Respondent, while employed at
26 Patton State Hospital, twice punched in the head a mental patient who was fully-restrained and in
27 bed in the presence of other hospital staff.

28 ///

1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Dishonest Acts)**

3 15. Respondent is subject to disciplinary action under section 2878,
4 subdivisions (a) and (j), on the grounds of unprofessional conduct, in that on or about June 13,
5 2006, during an administrative interview with an Investigator from the California Department of
6 Mental Health regarding the June 4, 2006 incident involving Respondent's punching of a fully-
7 restrained patient, and after being admonished concerning his need to be truthful, Respondent
8 denied that the alleged actions had transpired, even though independent testimonies of other
9 hospital staff contradicted his denial.

10 **FOURTH CAUSE FOR DISCIPLINE**

11 **(Unprofessional Conduct)**

12 16. Respondent is subject to disciplinary action under section 2878,
13 subdivisions (a) and (d), in that Respondent committed acts which constitute unprofessional
14 conduct for the reasons stated in paragraphs 13, 14, and 15 above.

15 **AGGRAVATING CIRCUMSTANCES**

16 17. On or about April 28, 1992, Respondent was convicted by the Court on
17 a guilty plea for violating one count of Penal Code section 273.5, a misdemeanor (spousal
18 abuse), in the Superior Court of California, County of San Bernardino, Victorville Jurisdictional
19 District, Case No. MVI29824 entitled *The People of the State of California v. Michael J. Garcia*.

20 a. The circumstances surrounding the conviction are that on or about April
21 25, 1992, during an argument, Respondent punched his wife in the mouth and about the face
22 causing her nose to bleed, choked her, and told her "I'll break your neck," when she tried to stop
23 him from leaving their mobile home with their baby.

24 **PRAYER**

25 WHEREFORE, Complainant requests that a hearing be held on the matters herein
26 alleged, and that following the hearing, the Bureau issue a decision:

27 1. Revoking or suspending Vocational Nurse License Number VN 179709,
28 issued to Michael Joseph Garcia;

1 2. Ordering Michael Joseph Garcia to pay the Bureau the reasonable costs of
2 the investigation and enforcement of this case, pursuant to Business and Professions Code
3 section 125.3;

4 3. Taking such other and further action as deemed necessary and proper.
5

6 DATED: November 4, 2008

7
8 

9 TERESA BELLO-JONES, J.D., M.S.N., R.N.
10 Executive Officer
11 Bureau of Vocational Nursing and Psychiatric Technicians
12 State of California
13 Complainant
14
15
16
17
18
19
20
21
22
23
24
25

26 LA2007600739

27 60349589.wpd
28 jz(rsv.tml0/7/08)